

NOTICE OF ELECTION TO INCREASE TAXES ON A CITIZEN PETITION

STATEWIDE ELECTION DAY IS

Tuesday, November 2, 2004

Polling places open from 7 a.m. to 7 p.m.
(*Early Voting Begins October 18, 2004*)



ANALYSIS OF THE 2004 BALLOT PROPOSALS

Legislative Council
of the
Colorado General Assembly

Research Publication No. 527-1

***A YES vote on any ballot issue is a vote IN FAVOR OF
changing current law or existing circumstances, and a
NO vote on any ballot issue is a vote AGAINST
changing current law or existing circumstances.***

Table 3. State Fiscal Year Spending and the Proposed Tobacco Tax Increases

	2005-06 Estimate
State Spending without New Taxes	\$8,483 million
New Cigarette Tax of \$0.64 per Pack	\$162 million
New Tobacco Products Tax of 20%	\$13 million
Total New Tobacco Taxes*	\$175 million
State Spending with New Taxes*	\$8,658 million

* The new tobacco tax revenue is not subject to the state's fiscal year spending limits.

**Amendment 36
Selection of Presidential Electors**

The proposed amendment to the Colorado Constitution:

eliminates the current system in which the presidential candidate receiving the most votes gets all of the state's electoral votes;

allocates Colorado's electoral votes based on the percentage of votes for each presidential candidate; and

makes the changes effective for the November 2004 presidential election.

Background

In the United States, the president and vice president are elected using a system called the electoral college. Under this system, each state is allotted electoral votes equal to the number of the state's representatives and senators in the U.S. Congress. The electoral college currently consists of 538 electors from all 50 states and the District of Columbia. Colorado has nine of these electors. In all but two states, the candidate who gets the most votes receives all of the state's electoral votes. A candidate must receive

at least 270 electoral votes to win the presidency. If no candidate obtains a majority of electoral votes, the presidency is decided by the U.S. House of Representatives, with each state allotted one vote.

In Colorado, each political party designates nine electors. Electors pledge to support that party's candidate for president and vice president. After each presidential election, electors from the winning party meet at the State Capitol to cast their vote for president and for vice president. All 50 states have a similar process for choosing electors.

Under this proposal, beginning with the November 2004 election, Colorado would allocate its electoral votes according to the percentage of ballots cast for each presidential ticket. Electoral votes would be divided, in whole numbers, among the competing candidates according to the number of votes each candidate receives. For example, if Candidate Smith gets 55 percent of the votes and Candidate Jones gets 45 percent, then Smith would receive five electoral votes and Jones would receive four.

The proposal also adds procedures and timelines to the state constitution for certifying election results and recounts related to the vote on this proposal.

Arguments For

1) This proposal makes Colorado's electoral vote more accurately reflect the statewide vote. Under the current winner-take-all system, one candidate automatically gets all of the state's electoral votes, even if he or she doesn't win a majority of votes on election day. Instead, Colorado's electoral votes should reflect all candidates who have widespread support, not just the candidate who gets as few as one more vote than another.

2) This proposal may motivate more people to vote because the votes of more Coloradans will be represented in the electoral college. Under the current system, eligible citizens may not bother to participate in elections if they believe that their vote will have no impact on the outcome, especially voters not affiliated with a political party. The proposal may also encourage minor-party

candidates to pay more attention to Colorado issues, in hopes of winning an electoral vote.

3) There can be no delay in the election of the president because of this change to the Colorado Constitution. The U.S. Constitution requires that the electoral college meet and cast votes in December following a presidential election, and that timing is unaffected by this proposal. Further, the Colorado courts have approved other proposals that are retroactive in nature.

Arguments Against

1) Colorado will likely become the least influential state in presidential elections because our current nine electoral votes will almost always be split 5-4. By awarding nine electoral votes to the winner, the current system encourages candidates to campaign in the state on issues of importance to Coloradans. In contrast, the proposal reduces the incentive to campaign in Colorado when a candidate might only pick up one or two additional electoral votes.

2) By making it easier for minor-party candidates to win electoral votes in Colorado, the proposal could lead to a situation where no candidate wins a majority of the electoral vote nationally. If this happens, the presidency would be determined by the U.S. House of Representatives with each state getting only one vote. Smaller states then would have disproportionate power, further weakening the popular vote by increasing the chance that the U.S. Congress, not the public, will elect the president.

3) Because the proposal attempts to be retroactive, it may be subject to legal challenge on the issue of timing, which could delay a final decision in Colorado on who wins the presidency in 2004. Further, voters in the 2004 election cycle may not realize that the outcome of the vote on this proposal will affect how Colorado's electoral votes are allocated in 2004.

Estimate of Fiscal Impact

This proposal does not significantly affect state or local expenditures.

Amendment 37 Renewable Energy Requirement

The proposed amendment to the Colorado Revised Statutes:

requires certain Colorado utilities to generate or purchase a portion of their electric power from renewable energy resources beginning in 2007;

defines the renewable energy resources that may be used to meet the requirement;

limits the amount that an average residential electric bill can increase as a result of the requirement to 50 cents per month;

provides financial incentives to certain customers and utilities to invest in renewable energy; and

allows a utility to hold an election to either exempt or include itself in the renewable energy requirement.

Background

Colorado is served by 60 utilities that generate electricity using primarily coal and natural gas, and some hydroelectric power. Colorado utilities are not required to use renewable energy sources to generate electricity; however, roughly 2 percent of electricity currently generated in Colorado comes from the renewable energy sources defined in this proposal. To date, 16 other states have adopted renewable energy requirements. The maximum amount and source of the renewable energy vary by state, ranging from 1.1 percent of the total electricity generated in Arizona (mostly solar) to 30 percent in Maine (mostly hydroelectric).

The proposal requires Colorado utilities with 40,000 or more customers to generate or purchase a percentage of their electricity from renewable sources according to the following schedule:

- 3 percent from 2007 through 2010;
- 6 percent from 2011 through 2014; and
- 10 percent by 2015 and thereafter.

Of the electricity generated each year from renewable sources, at least 4 percent must come from solar technologies. Initially, nine Colorado utilities serving over 80 percent of the state's electric customers will be required to comply with this proposal.

Eligible sources of renewable energy. Utilities may use a variety of renewable energy sources to satisfy the new requirement. These are: wind; solar; geothermal heat, such as underground reservoirs of steam or hot water; biomass facilities that burn nontoxic plants, methane from landfills, or animal waste; small hydroelectric power stations; and hydrogen fuel cells.

Financial incentives. Under the proposal, utility customers may earn a rebate for installing solar electric generation equipment on their property. Any electricity generated from the solar equipment in excess of the customer's annual use may be sold to the utility. In addition, for-profit utilities may earn extra profit and bonuses if their investment in renewable energy technologies reduces the retail cost of electricity to their customers.

Tradeable renewable energy credit system. A system of tradeable renewable energy credits will allow utilities that do not generate the required amount of electricity from renewable energy sources to purchase "credits" from those utilities that exceed the requirement.

Procedure for exemption and inclusion. Affected utilities may hold elections to exempt themselves from the renewable energy requirement. Similarly, utilities not subject to the requirement may hold elections to be included. At least 25 percent of the utility's customers must vote on the issue of exemption or inclusion, with a majority vote required for passage. In addition, a municipal utility or a rural electric cooperative may develop a similar renewable energy requirement and be exempted from this proposal. To qualify, the utility must: 1) use at least one of the eligible renewable energy sources, 2) follow the same schedule for electricity generation from renewable sources, and 3) offer an optional pricing program that allows customers to support emerging renewable technologies. Utilities that choose this option are not required to generate electricity from solar sources.

Role of the Colorado Public Utilities Commission.

The Public Utilities Commission must adopt rules to implement this proposal. The Commission will monitor and enforce the compliance of those utilities required to meet the new renewable energy requirements.

Arguments For

1) Using renewable energy makes economic sense.

Conventional fuels are finite, while renewable energy sources are unlimited. As time passes, supplies of coal and natural gas will diminish and these resources will likely become more expensive. In contrast, the price of renewable energy will decrease as technologies improve. Generating a percentage of electricity from renewable resources contributes to energy diversity and reduces Colorado's vulnerability to fluctuations in the price or supply of fuel.

2) Electricity generated from renewable sources has less harmful environmental impacts than electricity generated from conventional fuels. The environmental benefits of using renewable energy include cleaner air and water, more efficient use of water, and less damage to the landscape. Both coal and natural gas-fired power plants emit significant amounts of air pollutants. According to the federal Environmental Protection Agency, generating 10 percent of electricity from renewable sources is roughly equal to eliminating the carbon dioxide emissions from 600,000 cars annually.

3) Using a variety of resources to meet Colorado's increasing electricity needs will improve the stability and security of Colorado's electricity supply. Increasing Colorado's use of renewable energy will reduce its dependence on conventional fuels. The state must prepare for the future by requiring a percentage of its electricity to be generated from renewable resources.

4) Renewable energy facilities, typically located in rural areas, boost rural economies. The construction and maintenance of renewable energy facilities will create jobs in rural Colorado. Some farmers and ranchers will be able to tap into a new source of income by using agricultural waste to generate electricity and by leasing their land for wind facilities. In addition, renewable energy

facilities provide tax revenues that can be used by local governments to pay for services such as schools and hospitals.

Arguments Against

1) Electricity generated from renewable resources is oftentimes more expensive than electricity generated from conventional fuels. Colorado utilities with over 40,000 customers will be required to generate electricity from renewable resources, regardless of cost. Currently, utilities generate electricity using the least expensive fuel source. The proposal requires at least 4 percent of renewable energy to come from solar sources, one of the most expensive renewable energy sources. The proposal also prohibits utilities from counting electricity generated from large hydroelectric projects that are already in place toward the new requirement.

2) Consumers may pay more for electricity under this proposal. Utilities will pass any additional costs on to consumers, such as those for building or acquiring more transmission lines. While the proposal caps the amount that an average residential electric bill can increase as a result of the renewable energy requirement, it provides no such cap for non-residential customers such as business, industrial, government, or wholesale.

3) Colorado requires a continual and reliable means of energy production. A certain amount of electricity must be available at all times, and a certain amount must be maintained in reserve. Renewable energy, especially wind and solar resources, are intermittent and may not be available when needed. This could cause problems during peak energy demand periods or in emergencies.

4) The use of renewable resources should be a choice not a mandate. Colorado utilities are already using renewable energy resources when they are cost-effective. Further, most utilities have programs that give customers the option to purchase all or a share of their electricity from renewable sources.

Estimate of Fiscal Impact

State impact. The renewable energy requirement will be administered by the Colorado Public Utilities Commission. Average annual administrative costs to the Commission are estimated at roughly \$60,000, with the potential for an additional one-time start-up cost of up to \$80,000. These costs will be covered by fees charged to affected utilities. In addition, to the extent that this proposal changes retail electricity rates, state and local governments will see changes to their electric utility bills.

Impact on retail electricity rates. Changes in retail electricity rates as a result of this proposal will vary by service provider, and will depend upon several factors, including:

- the amount of renewable generation the provider has installed versus the amount it must acquire from other providers in the form of renewable energy credits;
- the cost difference of generating electricity from renewable sources versus conventional fuel sources;
- the price of natural gas and coal;
- whether federal tax credits for renewable energy facilities are available;
- the amount of solar generation the provider currently has in place; and
- the number of customers choosing to install on-site solar facilities.

Referendum A State Personnel System

The proposed amendment to the Colorado Constitution:

exempts about 140 additional state employees from the state civil service system, also known as the state personnel system;

changes testing and hiring procedures for filling vacancies in the state personnel system;

transfers certain oversight responsibilities from the State Personnel Board to the executive director of the Department of Personnel and Administration;

allows the legislature to change certain state personnel policies and procedures by law; and

expands veterans' hiring preferences to include members of the National Guard.

Background

What is the state personnel system? Colorado voters amended the state constitution in 1918 to create the state personnel system. It requires that state employees be hired and promoted according to merit. This proposal makes a number of changes to the constitution and in certain instances gives the legislature the authority to change the personnel system.

Currently, there are about 31,000 state employees in the state personnel system. Most are employees of the state's 19 departments, and some are employees of state higher education institutions. About 29,000 additional state employees are exempt from the state personnel system, including department heads, faculty of public universities, and employees of the legislature, the Governor's Office, and the state courts. This proposal exempts an additional 0.45 percent of the number of employees in the state personnel system, or about 140 senior state officers and support staff combined. Table 1 shows the personnel system employment requirements under the constitution and this proposal.

Table 1: Current and Proposed State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Hiring and Promotions	Prohibits discrimination based on race, religion, and political affiliation.	Adds prohibitions on discrimination based on sex and age, unless otherwise permitted by law.
Residency	Requires state employees to reside in Colorado.	Allows the legislature to make exceptions to the Colorado residency requirement, provided employees are United States residents.
Discipline	Sets criteria for disciplining an employee in the constitution.	Allows the legislature to address certain disciplinary policies in law.
Temporary Employees	Limits temporary employment to six months.	Limits temporary employment to nine months in any 12-month period.

How is the state personnel system governed? The five-member State Personnel Board sets the policy for the state personnel system, and the executive director of the Department of Personnel and Administration takes care of day-to-day operations. Table 2 describes the current duties of the board and the executive director and the proposed changes.

Table 2: Oversight of State Personnel System

Issue	The Current Personnel System:	The Proposed Personnel System:
Board Membership	Limits members' terms to five years. Prohibits state employees from serving on the board.	Limits members' terms to two five-year terms. Allows state employees to serve on the board.
Board Duties	Requires the board to make rules governing the state personnel system and to hear appeals from employees and job applicants.	Transfers the board's rule-making authority over hiring, job classifications, compensation, performance standards, and voluntary departures to the executive director. Retains the board's powers over grievances, discipline, involuntary dismissals, and appeals. Allows the legislature to transfer duties between the board and executive director.
Executive Director Duties	Manages the state personnel system and approves temporary employment of up to six months.	Expands the executive director's duties to include rule-making over hiring, job classifications, compensation, performance standards, and voluntary departures.

How are job applicants hired? Current law identifies how employees are hired and promoted. Table 3 describes current law pertaining to testing and hiring procedures and the proposed changes.

Table 3: Hiring of State Personnel System Employees

Issue	The Current Personnel System:	The Proposed Personnel System:
Testing	Requires applicants for jobs in the state personnel system to be hired based on competitive testing.	Requires job applicants to be hired based on a comparison of qualifications. Requires the legislature to determine the methods for comparing applicants.
Interview Eligibility List	Limits the eligibility list to the three highest scoring applicants.	Increases the eligibility list to six applicants.
Veterans' Preference	Adds preference points to the passing test scores of veterans who served during war time.	Extends the preference to National Guard veterans who served during war time. Requires that all veterans who served during war time be interviewed if scored testing is not used.

How will this proposal be implemented? During the 2004 legislative session, a state law was passed that defines procedures and sets limits on issues addressed in this proposal. Most of the law will go into effect only if this proposal is adopted. Among other provisions, the bill prohibits more than 15 exempt officers and employees in any department and changes the laws regulating contracts for services. Table 4 shows the current limits on such contracts and the new requirements.

Table 4: Contracts for Services

Issue	Current Service Contract Law:	House Bill 04-1373:
Service Contracts	Permits contracting only for state government functions not traditionally performed by employees in the state personnel system. Prohibits contracts that eliminate a position within the state personnel system.	Repeals current law pertaining to when the state may use contracts for services. Allows contracts for all state government functions as long as the security of state, local, and national information systems are not compromised. Allows positions to be eliminated as long as employees are moved to new positions within the state personnel system.
Notice and Appeal	Not addressed in law.	Requires notification of the public and affected employees prior to eliminating jobs in the state personnel system. Allows employees to request a review of the contract by the executive director of the Department of Personnel and Administration and the courts.
Contract Oversight	Requires contract approval by the Department of Personnel and Administration executive director.	Requires approval by the contracting department's executive director.
Foreign Contractors	Not addressed in law.	Permits, if the contract maintains quality of service, protects privacy, and discloses work performed outside the United States.

Arguments For

1) The constitution needs to be updated to allow the state's workforce to keep pace with the work environment of the 21st Century. The state personnel system has not changed significantly in the past 85 years. This proposal increases the flexibility of the personnel system by eliminating unnecessary detail from the constitution and allowing the legislature to adjust the system to respond to changing circumstances. Colorado is one of only 15 states whose personnel system is tied to the state constitution. Requiring a vote of the people every time an aspect of the system becomes outdated or unworkable is inefficient.

2) Taxpayer money should be used to hire the best candidate for a job. The current personnel system favors people who are the best test takers, not necessarily the most qualified candidates. This proposal helps ensure that the best candidate is hired by expanding the pool of eligible candidates and allowing a more effective comparison of desired job qualifications.

3) This proposal allows a governor's administration to select about 140 more individuals who share the governor's values to carry out the administration's policies. The state personnel system has grown from about 1,000 employees in 1916 to over 31,000 in 2004. However, the ability of a governor and the administration to appoint high-level state administrators has not changed. With this proposal, future governors will be able to get off to a quick start on their policy initiatives because senior personnel from past administrations can be easily replaced.

4) The state will spend taxpayer money wisely if it can hire well-qualified employees and improve the use of service contracts, resulting in an efficient personnel system that provides high quality services. Further, all state contracts will continue to be subject to current purchasing, financial, employee conduct, and disclosure requirements. These requirements protect the new system against awarding contracts as political favors.

Arguments Against

1) This proposal gives governors and their appointees too much power to control state government. Each administration will be given about 140 additional appointments. Also, the governor-appointed executive director of the Department of Personnel and Administration will now have policy-making authority over areas of the personnel system that the State Personnel Board has traditionally overseen. Those areas include hiring, job classifications, compensation, performance standards, and voluntary departures. The proposal also allows the legislature to shift further power from the State Personnel Board to the executive director. Making the personnel system subject to annual changes by the legislature could disrupt the personnel system. These changes combined may make the state personnel system less predictable and vulnerable to abuse.

2) Comparing applicant qualifications, rather than testing, could be manipulated to allow state employees to be hired based on their political connections and not on merit. Testing candidates to determine the best candidate for a job is the most efficient and fair way to hire employees.

3) More contracting with private companies could shift jobs out of Colorado to other states and countries. Also, there is no guarantee that unregulated contract workers will provide services to the state in the most cost-effective manner. State contracts awarded by appointees may lead to abuses if contracts are used as political favors.

4) This proposal could result in more political appointees. More political appointees in management positions may not lead to better state government. Instead, institutional knowledge will be lost as experienced senior personnel system employees are displaced by appointees who may not have the necessary skills to perform the job.

Estimate of Fiscal Impact

This proposal is not expected to significantly affect state or local expenditures.

Referendum B Obsolete Constitutional Provisions

The proposed amendment to the Colorado Constitution:

removes provisions that are obsolete;

strikes references to one-time events that have already occurred; and

removes voting requirements found unconstitutional by the Colorado Supreme Court in 1972.

Background

Obsolete provisions. A requirement that the Superintendent of Public Instruction serve as the state librarian is deleted because the superintendent position no longer exists. The Commissioner of Education replaced the Superintendent of Public Instruction in 1948. A provision concerning the eligibility of a person living in a poorhouse to vote or run for office is also deleted. Poorhouses, or publicly supported homes for the poor, no longer exist in Colorado.

References to one-time events. The constitution required all agencies of state government to be divided among no more than 20 state departments by June 30, 1968. This requirement stemmed from a major reorganization of state government in the 1960s. The proposal removes the reference to June 30, 1968, but does not change the limit on the number of departments. The proposal also removes language regarding the expiration of terms for former State Board of Land Commissioners since they are no longer in office.

Unconstitutional provisions. The proposal strikes a requirement in one section of the constitution that citizens live in the state for three months before being eligible to vote and a requirement in another section that citizens live in the state for at least one year before being eligible to vote. The Colorado Supreme Court held in 1972 that voting is a fundamental right that cannot be limited by imposing a three-month residency requirement. The court based its ruling on a U.S. Supreme Court decision that a

similar residency requirement violated the U.S. Constitution. State law currently establishes a 30-day residency requirement for voters for all elections.

Argument For

1) The proposal continues an effort to update the constitution by deleting unconstitutional and outdated language. Unconstitutional language can be confusing and misleading to readers who do not know the language has been nullified by a court. Outdated language clutters the constitution.

Argument Against

1) All provisions of the constitution have historical significance. Removing these provisions may diminish the historical character of the constitution and make research of constitutional provisions and state laws more difficult.

Estimate of Fiscal Impact

The proposal does not affect state or local revenues or expenditures.

TITLES AND TEXT

Amendment 34 Construction Liability

Ballot Title: An amendment to the Colorado constitution concerning recovery of damages relating to construction of real property improvements, and, in connection therewith, prohibiting laws that limit or impair a property owner's right to recover damages caused by a failure to construct an improvement in a good and workmanlike manner; defining "good and workmanlike manner" to include construction that is suitable for its intended purposes; and permitting exceptions for laws that limit punitive damages, afford governmental immunity, or impose time limits of specified minimum lengths on filing lawsuits.

Text of Proposed Amendment:

Be it Enacted by the People of the State of Colorado:

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 15. Protection of property owner's right to workmanlike construction. NO LAW SHALL LIMIT OR IMPAIR A PUBLIC OR PRIVATE PROPERTY OWNER'S RIGHT TO RECOVER DAMAGES, OTHER THAN PUNITIVE DAMAGES, CAUSED BY THE FAILURE TO CONSTRUCT AN IMPROVEMENT TO REAL PROPERTY IN A GOOD AND WORKMANLIKE MANNER. STATUTES OF LIMITATIONS OF NOT LESS THAN TWO YEARS AND STATUTES OF REPOSE OF NOT LESS THAN SIX YEARS, AS WELL AS LAWS AFFORDING GOVERNMENTAL IMMUNITY, SHALL BE PERMITTED. CONSTRUCTION IN A "GOOD AND WORKMANLIKE MANNER" SHALL INCLUDE, WITHOUT LIMITATION, CONSTRUCTION SO THAT THE IMPROVEMENT TO REAL PROPERTY IS SUITABLE FOR ITS INTENDED PURPOSES. THIS SECTION SHALL BE STRICTLY ENFORCED.

TITLES AND TEXT

Amendment 35
Tobacco Tax Increase for Health-Related Purposes

Ballot Title: STATE TAXES SHALL BE INCREASED \$175 MILLION ANNUALLY THROUGH ADDITIONAL TOBACCO TAXES IMPOSED FOR HEALTH RELATED PURPOSES, AND, IN CONNECTION THEREWITH, AMENDING THE COLORADO CONSTITUTION TO INCREASE STATEWIDE TAXES ON THE SALE OF CIGARETTES BY WHOLESALERS OF THREE AND TWO-TENTHS CENTS PER CIGARETTE AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF OTHER TOBACCO PRODUCTS BY DISTRIBUTORS AT THE RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE; INCREASING SUCH TOBACCO TAXES EFFECTIVE JANUARY 1, 2005; REQUIRING ANNUAL APPROPRIATIONS OF SPECIFIED PERCENTAGES OF THE ADDITIONAL TOBACCO TAX REVENUES TO EXPAND ELIGIBILITY FOR AND INCREASE ENROLLMENT IN THE CHILDREN'S BASIC HEALTH PLAN, TO FUND COMPREHENSIVE PRIMARY MEDICAL CARE THROUGH CERTAIN COLORADO QUALIFIED PROVIDERS, TOBACCO EDUCATION PROGRAMS, AND PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES, TO COMPENSATE THE STATE GENERAL FUND, THE OLD AGE PENSION FUND, AND LOCAL GOVERNMENTS FOR TOBACCO TAX LOSSES RESULTING FROM REDUCED SALES OF CIGARETTES AND TOBACCO PRODUCTS; SPECIFYING THAT THE APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES SHALL BE IN ADDITION TO AND NOT SUBSTITUTED FOR APPROPRIATIONS FOR SUCH PROGRAMS ON JANUARY 1, 2005; ALLOWING THE USE OF ADDITIONAL TOBACCO TAX REVENUES FOR ANY HEALTH RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AS OF JANUARY 1, 2005, UPON A DECLARATION OF A STATE FISCAL EMERGENCY BY TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE GENERAL ASSEMBLY AND THE GOVERNOR; PROHIBITING THE REPEAL OR REDUCTION OF EXISTING TAXES IMPOSED ON CIGARETTES AND OTHER TOBACCO PRODUCTS; EXCLUDING ALL ADDITIONAL TOBACCO TAX REVENUES FROM FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; AND EXEMPTING APPROPRIATIONS OF ADDITIONAL TOBACCO TAX REVENUES FROM THE STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR ANY OTHER EXISTING SPENDING LIMITATION.

Text of Proposal:

Be it Enacted by the People of the State of Colorado:

Article X of the Constitution of the State of Colorado is hereby amended BY THE ADDITION OF A NEW SECTION to read:

Section 21. Tobacco Taxes for Health Related Purposes.

(1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND THAT TOBACCO ADDICTION IS THE LEADING CAUSE OF PREVENTABLE DEATH IN COLORADO, THAT COLORADO SHOULD DETER CHILDREN AND YOUTH FROM STARTING SMOKING, THAT CIGARETTE AND TOBACCO TAXES ARE EFFECTIVE AT PREVENTING AND REDUCING TOBACCO USE AMONG CHILDREN AND YOUTH, AND THAT TOBACCO TAX REVENUES WILL BE USED TO EXPAND HEALTH CARE FOR CHILDREN AND LOW INCOME POPULATIONS, TOBACCO EDUCATION PROGRAMS AND THE PREVENTION AND TREATMENT OF CANCER AND HEART AND LUNG DISEASE.

(2) THERE ARE HEREBY IMPOSED THE FOLLOWING ADDITIONAL CIGARETTE AND TOBACCO TAXES:

- (a) STATEWIDE CIGARETTE TAX, ON THE SALE OF CIGARETTES BY WHOLESALERS, AT THE RATE OF THREE AND TWO-TENTHS CENTS PER CIGARETTE (64 CENTS PER PACK OF TWENTY); AND
- (b) A STATEWIDE TOBACCO PRODUCTS TAX, ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS, AT THE RATE OF TWENTY PERCENT OF THE MANUFACTURER'S LIST PRICE.

(3) THE CIGARETTE AND TOBACCO TAXES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER CIGARETTE AND TOBACCO TAXES EXISTING AS OF THE EFFECTIVE DATE OF THIS SECTION ON THE SALE OR USE OF CIGARETTES BY WHOLESALERS AND ON THE SALE, USE, CONSUMPTION, HANDLING, OR DISTRIBUTION OF TOBACCO PRODUCTS BY DISTRIBUTORS. SUCH EXISTING TAXES AND THEIR DISTRIBUTION SHALL NOT BE REPEALED OR REDUCED BY THE GENERAL ASSEMBLY.

(4) ALL REVENUES RECEIVED BY OPERATION OF SUBSECTION (2) SHALL BE EXCLUDED FROM FISCAL YEAR SPENDING, AS THAT TERM IS DEFINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION, AND THE CORRESPONDING SPENDING LIMITS UPON STATE GOVERNMENT AND ALL LOCAL GOVERNMENTS RECEIVING SUCH REVENUES.

(5) THE REVENUES GENERATED BY OPERATION OF SUBSECTION (2) SHALL BE APPROPRIATED ANNUALLY BY THE GENERAL ASSEMBLY ONLY IN THE FOLLOWING PROPORTIONS AND FOR THE FOLLOWING HEALTH RELATED PURPOSES:

(a) FORTY-SIX PERCENT (46%) OF SUCH REVENUES SHALL BE APPROPRIATED TO INCREASE THE NUMBER OF CHILDREN AND PREGNANT WOMEN ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN ABOVE THE AVERAGE ENROLLMENT FOR STATE FISCAL YEAR 2004, ADD THE PARENTS OF ENROLLED CHILDREN, AND EXPAND ELIGIBILITY OF LOW INCOME ADULTS AND CHILDREN WHO RECEIVE MEDICAL CARE THROUGH THE "CHILDREN'S BASIC HEALTH PLAN ACT", ARTICLE 19 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, OR THROUGH THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(b) NINETEEN PERCENT (19%) OF SUCH REVENUES SHALL BE APPROPRIATED TO FUND COMPREHENSIVE PRIMARY CARE THROUGH ANY COLORADO QUALIFIED PROVIDER, AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT," ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, THAT MEETS EITHER OF THE FOLLOWING CRITERIA:

(I) IS A COMMUNITY HEALTH CENTER AS DEFINED IN SECTION 330 OF THE U.S. PUBLIC HEALTH SERVICES ACT, OR ANY SUCCESSOR ACT; OR

(II) AT LEAST 50% OF THE PATIENTS SERVED BY THE QUALIFIED PROVIDER ARE UNINSURED OR MEDICALLY INDIGENT AS DEFINED IN THE "COLORADO MEDICAL ASSISTANCE ACT," ARTICLE 4 OF TITLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT, OR ARE ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN OR THE COLORADO MEDICAL ASSISTANCE PROGRAM, OR SUCCESSOR PROGRAMS.

SUCH REVENUES SHALL BE APPROPRIATED TO THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR SUCCESSOR AGENCY, AND SHALL BE DISTRIBUTED ANNUALLY TO ALL ELIGIBLE QUALIFIED PROVIDERS THROUGHOUT THE STATE PROPORTIONATE TO THE NUMBER OF UNINSURED OR MEDICALLY INDIGENT PATIENTS SERVED.

(c) SIXTEEN PERCENT (16%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR SCHOOL AND COMMUNITY-BASED AND STATEWIDE TOBACCO EDUCATION PROGRAMS DESIGNED TO REDUCE INITIATION OF TOBACCO USE BY CHILDREN AND YOUTH, PROMOTE CESSATION OF TOBACCO USE AMONG YOUTH AND ADULTS, AND REDUCE EXPOSURE TO SECOND-HAND SMOKE. SUCH REVENUES SHALL BE APPROPRIATED THROUGH THE "TOBACCO EDUCATION, PREVENTION AND CESSATION ACT", PART 8 OF ARTICLE 3.5 OF TITLE 25, COLORADO REVISED STATUTES, OR ANY SUCCESSOR ACT.

(d) SIXTEEN PERCENT (16%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR THE PREVENTION, EARLY DETECTION, AND TREATMENT OF CANCER AND CARDIOVASCULAR AND PULMONARY DISEASES. SUCH REVENUES SHALL BE APPROPRIATED TO THE PREVENTION SERVICES DIVISION OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR SUCCESSOR AGENCY, AND SHALL BE DISTRIBUTED STATEWIDE WITH OVERSIGHT AND ACCOUNTABILITY BY THE COLORADO STATE BOARD OF HEALTH CREATED BY ARTICLE 1 OF TITLE 25, COLORADO REVISED STATUTES.

(e) THREE PERCENT (3%) OF SUCH REVENUES SHALL BE APPROPRIATED FOR HEALTH RELATED PURPOSES TO PROVIDE REVENUE FOR THE STATE'S GENERAL FUND, OLD AGE PENSION FUND, AND MUNICIPAL AND COUNTY GOVERNMENTS TO COMPENSATE PROPORTIONATELY FOR TAX REVENUE REDUCTIONS ATTRIBUTABLE TO LOWER CIGARETTE AND TOBACCO SALES RESULTING FROM THE IMPLEMENTATION OF THIS TAX.

(6) REVENUES APPROPRIATED PURSUANT TO PARAGRAPHS (a), (b), AND (d) OF SUBSECTION (5) SHALL BE USED TO SUPPLEMENT REVENUES THAT ARE APPROPRIATED BY THE GENERAL ASSEMBLY FOR HEALTH RELATED PURPOSES ON THE EFFECTIVE DATE OF THIS SECTION, AND SHALL NOT BE USED TO SUPPLANT THOSE APPROPRIATED REVENUES.

(7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY MAY USE REVENUE GENERATED UNDER THIS SECTION FOR ANY HEALTH RELATED PURPOSE AND TO SERVE POPULATIONS ENROLLED IN THE CHILDREN'S BASIC HEALTH PLAN AND THE COLORADO MEDICAL ASSISTANCE PROGRAM AT THEIR RESPECTIVE LEVELS OF ENROLLMENT ON THE EFFECTIVE DATE OF THIS SECTION. SUCH USE OF REVENUE MUST BE PRECEDED BY A DECLARATION OF A STATE FISCAL EMERGENCY, WHICH SHALL BE ADOPTED ONLY BY A JOINT RESOLUTION, APPROVED BY A TWO-THIRDS MAJORITY VOTE OF THE MEMBERS OF BOTH HOUSES OF THE GENERAL ASSEMBLY AND THE GOVERNOR. SUCH DECLARATION SHALL APPLY ONLY TO A SINGLE FISCAL YEAR.

(8) REVENUES APPROPRIATED PURSUANT TO SUBSECTIONS (5) AND (7) OF THIS SECTION SHALL NOT BE SUBJECT TO THE STATUTORY LIMITATION ON GENERAL FUND APPROPRIATIONS GROWTH OR ANY OTHER SPENDING LIMITATION EXISTING IN LAW.

(9) THIS SECTION IS EFFECTIVE JANUARY 1, 2005.

TITLES AND TEXT

Amendment 36

Selection of Presidential Electors

Ballot Title: An amendment to the Colorado constitution concerning popular proportional selection of presidential electors, and, in connection therewith, creating procedures for allocating Colorado's electoral votes for president and vice-president of the United States, based on the proportion of ballots that are cast in this state for each presidential ticket; making the terms of the proposed amendment effective so that popular proportional selection of presidential electors applies to the 2004 general election; setting forth procedures and timelines that govern the certification of election results and the potential recounting of votes in elections for presidential electors and in the election on this proposed amendment; granting the Colorado supreme court original jurisdiction for the adjudication of all contests concerning presidential electors and requiring that such matters be heard and decided on an expedited basis; and authorizing the general assembly to enact legislation to change the manner of selecting presidential electors or any of the procedures contained in this amendment.

Text of Proposal:

Be it Enacted by the People of the State of Colorado:

ARTICLE VII OF THE CONSTITUTION is amended BY THE ADDITION OF A NEW SECTION, to read:

Section 13. Popular proportional selection of presidential electors.

(1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THE UNITED STATES CONSTITUTION DELEGATES TO EACH STATE THE METHOD OF CHOOSING PRESIDENTIAL ELECTORS WHO ARE CHARGED WITH CASTING VOTES IN THE ELECTORAL COLLEGE FOR THE OFFICES OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES;

(b) THE COLORADO CONSTITUTION RESERVES TO THE PEOPLE OF THIS STATE THE RIGHT TO ACT IN THE PLACE OF THE STATE LEGISLATURE IN ANY LEGISLATIVE MATTER, AND THROUGH ENACTMENT OF THIS SECTION, THE PEOPLE DO HEREBY ACT AS THE LEGISLATURE OF COLORADO FOR THE PURPOSE OF CHANGING THE MANNER OF ELECTING PRESIDENTIAL ELECTORS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE II, SECTION 1 OF THE UNITED STATES CONSTITUTION;

(c) THE RIGHT TO VOTE FOR PRESIDENT OF THE UNITED STATES IS A FUNDAMENTAL RIGHT AND EACH PERSON'S VOTE IS ENTITLED TO EQUAL DIGNITY AND SHOULD COUNT EQUALLY;

(d) THE PRESENT WINNER-TAKE-ALL METHOD OF AWARDING PRESIDENTIAL ELECTORS IN COLORADO PERMITS A PRESIDENTIAL TICKET TO RECEIVE ALL OF THIS STATE'S ELECTORAL VOTES EVEN THOUGH IT WINS LESS THAN A MAJORITY OF THE BALLOTS CAST IN THIS STATE;

(e) THE WILL OF THE COLORADO ELECTORATE IS BEST REFLECTED BY THE POPULAR PROPORTIONAL ALLOCATION OF ELECTORAL COLLEGE REPRESENTATIVES, BASED ON THE NUMBER OF BALLOTS CAST FOR THE RESPECTIVE PRESIDENTIAL TICKETS IN THIS STATE; AND

(f) IN THE STRONGEST POSSIBLE TERMS, THE VOTERS OF COLORADO DECLARE THAT, BY APPROVING THIS INITIATIVE, THEY UNDERSTAND, DESIRE, AND EXPECT THAT THE POPULAR PROPORTIONAL SELECTION OF PRESIDENTIAL ELECTORS IS INTENDED TO APPLY RETROACTIVELY AND THUS DETERMINE THE MANNER IN WHICH OUR STATE'S PRESIDENTIAL ELECTORS ARE CHOSEN AND OUR STATE'S ELECTORAL VOTES ARE CAST FOR THE GENERAL ELECTION OF 2004.

(2) THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED SHALL BE DIVIDED AMONG THE PRESIDENTIAL TICKETS ON THE GENERAL ELECTION BALLOT, BASED UPON THE POPULAR PROPORTIONAL SHARE OF THE TOTAL STATEWIDE BALLOTS CAST FOR EACH PRESIDENTIAL TICKET, SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION. EACH PRESIDENTIAL ELECTOR SHALL VOTE FOR THE PRESIDENTIAL CANDIDATE AND, BY SEPARATE BALLOT, VICE-PRESIDENTIAL CANDIDATE ON THE PRESIDENTIAL TICKET OF THE POLITICAL PARTY OR POLITICAL ORGANIZATION THAT NOMINATED THAT PRESIDENTIAL ELECTOR.

(3) THE ALLOCATION OF A PRESIDENTIAL TICKET'S POPULAR PROPORTION OF THIS STATE'S ELECTORAL VOTES SHALL BE IN WHOLE NUMBERS AND SHALL BE MADE IN THE FOLLOWING MANNER:

(a) THE TOTAL NUMBER OF BALLOTS CAST IN THIS STATE FOR EACH PRESIDENTIAL TICKET AT A GENERAL ELECTION SHALL BE DIVIDED BY THE TOTAL NUMBER OF BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS THAT RECEIVE VOTES AT THAT GENERAL ELECTION; AND

(b) THE PROPORTION OF A PRESIDENTIAL TICKET’S POPULAR VOTE, AS DETERMINED IN PARAGRAPH (a) OF THIS SUBSECTION, SHALL BE MULTIPLIED BY THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED.

(4) THE NUMBER OF ELECTORAL VOTES THAT IS ATTRIBUTABLE TO THE BALLOTS CAST FOR ANY PRESIDENTIAL TICKET, AS DETERMINED IN SUBSECTION (3) OF THIS SECTION, SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER, SUBJECT TO THE FOLLOWING LIMITATIONS.

(a) NO PRESIDENTIAL TICKET SHALL RECEIVE ANY ELECTORAL VOTES FROM THIS STATE IF ITS PROPORTION OF THE TOTAL BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS WOULD REFLECT LESS THAN A FULL ELECTORAL VOTE AFTER ROUNDING TO THE NEAREST WHOLE NUMBER.

(b) IF THE SUM OF ELECTORAL VOTES ALLOCATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION IS GREATER THAN THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED:

(I) THE ALLOCATION OF ELECTORAL VOTES TO THE PRESIDENTIAL TICKET RECEIVING AT LEAST ONE ELECTORAL VOTE AND THE FEWEST NUMBER OF BALLOTS CAST SHALL BE REDUCED BY WHOLE ELECTORAL VOTES UNTIL ONLY THAT NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED; AND

(II) THE PROCESS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE REPEATED IF, AFTER THE REDUCTION OF ELECTORAL VOTES AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE TOTAL NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS REMAINS GREATER THAN THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH THIS STATE IS ENTITLED, AND SUCH PROCESS SHALL BE APPLIED TO THE PRESIDENTIAL TICKET RECEIVING AT LEAST ONE ELECTORAL VOTE AND THE NEXT FEWEST NUMBER OF BALLOTS CAST UNTIL THE TOTAL NUMBER OF ELECTORAL VOTES ALLOCATED TO ALL PRESIDENTIAL TICKETS IS EQUAL TO THE TOTAL NUMBER OF ELECTORAL VOTES TO WHICH THIS STATE IS ENTITLED.

(c) IF THE SUM OF ALL ELECTORAL VOTES ALLOCATED WOULD BE LESS THAN THE NUMBER OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED, THE PRESIDENTIAL TICKET RECEIVING THE GREATEST NUMBER OF BALLOTS CAST SHALL RECEIVE ANY UNALLOCATED ELECTORAL VOTES UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED.

(d) IF TWO OR MORE PRESIDENTIAL TICKETS RECEIVE THE IDENTICAL TOTAL NUMBER OF BALLOTS CAST FOR ALL PRESIDENTIAL TICKETS AND THE ALLOCATION OF ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED CANNOT

BE PROPORTIONALLY ALLOCATED IN WHOLE ELECTORAL VOTES TO THESE PRESIDENTIAL TICKETS, THE SECRETARY OF STATE SHALL DETERMINE BY LOT WHICH OF THESE PRESIDENTIAL TICKETS WILL HAVE THEIR NUMBER OF ELECTORAL VOTES INCREASED OR DECREASED BY A WHOLE ELECTORAL VOTE UNTIL ALL OF THE ELECTORAL VOTES TO WHICH COLORADO IS ENTITLED HAVE BEEN ALLOCATED.

(5) (a) A RECOUNT OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE SHALL BE ORDERED BY THE SECRETARY OF STATE IF THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE IS LESS THAN OR EQUAL TO ONE-HALF OF ONE PERCENT OF THE HIGHEST NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS INITIATIVE. WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR AND AGAINST THIS INITIATIVE IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE HIGHEST NUMBER OF BALLOTS CAST IN THE ELECTION ON THIS INITIATIVE, A RECOUNT IN CONNECTION WITH THIS INITIATIVE MAY BE REQUESTED BY A PETITION REPRESENTATIVE IDENTIFIED WITH THIS INITIATIVE OR THE REGISTERED AGENT OF AN ISSUE COMMITTEE OPPOSING THIS INITIATIVE; PROVIDED, HOWEVER, THAT ANY SUCH PERSON OR THE COMMITTEE WITH WHICH HE OR SHE IS ASSOCIATED SHALL PAY THE COST OF SUCH RECOUNT BEFORE THE SECRETARY MAY BEGIN THE RECOUNT, BUT IF THE PREVAILING SIDE IN THE ELECTION IS CHANGED THEREBY, SUCH AMOUNT SHALL BE REFUNDED.

(b) A RECOUNT SHALL BE ORDERED BY THE SECRETARY OF STATE IF:

(I) THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR ANY TWO PRESIDENTIAL TICKETS IS LESS THAN OR EQUAL TO ONE-HALF OF ONE PERCENT OF THE BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES OF THE TWO PRESIDENTIAL TICKETS IN QUESTION; AND

(II) AT LEAST ONE OF THE TWO PRESIDENTIAL TICKETS, AS A RESULT OF SUCH RECOUNT, COULD QUALIFY FOR ONE OR MORE ADDITIONAL ELECTORAL VOTES.

WHERE THE DIFFERENCE BETWEEN THE NUMBER OF BALLOTS CAST FOR THE TWO PRESIDENTIAL TICKETS IN QUESTION IS GREATER THAN ONE-HALF OF ONE PERCENT OF THE BALLOTS CAST FOR THE TICKET THAT RECEIVED THE MOST VOTES AS BETWEEN THOSE TWO TICKETS, A RECOUNT FOR PRESIDENTIAL ELECTORS MAY BE REQUESTED BY A PRESIDENTIAL TICKET OR THE POLITICAL PARTY OR POLITICAL ORGANIZATION ASSOCIATED WITH SUCH TICKET; PROVIDED, HOWEVER, THAT ANY SUCH TICKET OR POLITICAL PARTY OR ORGANIZATION WITH WHICH IT IS ASSOCIATED SHALL PAY THE COST OF SUCH RECOUNT BEFORE THE

TITLES AND TEXT